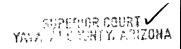


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#### 2010 OCT 15 AM 8: 20

JEANNE HICKS, CLERK

S. KELBAUGH

### IN THE SUPERIOR COURT OF STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI

# STATE OF ARIZONA, Cause No. P1300CR20081339 Plaintiff, Division 6

v.
STATE'S REPLY TO DEFENDANT'S
OBJECTION TO STATE'S MOTION TO
EXTEND TIME FOR ADDITIONAL
DISLCOSURE DATED SEPTEMBER 20,
2010 AND MOTION IN LIMINE TO
PRECLUDE EVIDENCE RELATED TO
THE ANONYMOUS EMAIL FILED
OCTOBER 14, 2010

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Reply to Defendant's Objection to State's Motion to Extend Time for Additional Disclosure Dated September 20, 2010 and Motion in Limine to Preclude Evidence Related to the Anonymous Email filed October 14, 2010.

The anonymous email is a recitation of facts as to the manner in which Carol Kennedy was murdered. The defense has repeatedly argued that only someone present at the time of the murder could know these facts. The State now possesses evidence in the form of testimony from Renee Girard and Charlotte DeMocker that Defendant Steven DeMocker is the author of the anonymous email. Therefore, the anonymous email constitutes a confession

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by Steven DeMocker that he was present at the time of the murder of Carol Kennedy. He is no longer "anonymous" as the email author and it can easily and reasonably be inferred from the anonymous email that Steven DeMocker is the murderer of Carol Kennedy.

Testimony of John Sears is not necessary for any purpose concerning the anonymous email unless the defense disputes chain of custody of the email. Sears turned the email over to Deputy County Attorney Joe Butner and YCAO Investigator Randy Schmidt. Schmidt investigated the email and found the internet café in Phoenix from which it was sent. Charlotte DeMocker has admitted to sending the email after being requested to do so by her father. Renee Girard will testify to being shown the language of the email in a jail visit before Defendant turned it over to Charlotte DeMocker during the same jail visit.

The State is not offering evidence of Defendant's character, but rather evidence of consciousness of guilt and Defendant's presence at the scene of the murder. Furthermore, the email demonstrates Defendant's willingness to construct a fictitious third party culpability defense as another step beyond planning to flee. Again, Defendant demonstrates consciousness of guilt in so doing.

The fact that Defendant has been charged with new crimes arising from the anonymous email is irrelevant and immaterial to this case. The State has not suggested, nor does it intend, to use those charges in the case at bar unless the defense requests joinder.

Defendant's Motion should be denied.

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1	RESPECTFULLY SUBMITTED this
2	Sheila Sullivan Polk
3	YAVAPAI COUNTY ATTORNEY
4	(By: Chry.
5	Joseph C. Butner Deputy County Attorney
6	
7	COPIES of the foregoing delivered this day of October, 2010 to:
8	Honorable Warren Darrow
9	Division 6
10	Yavapai County Superior Court
	(via email)
11	John Sears
12	511 E. Gurley St.
13	Prescott, AZ 86301 Attorney for Defendant
14	(via email)
15	Larry Hammond Anne Chapman
16	Osborn Maledon, P.A. 2929 North Central Ave, 21 <sup>st</sup> Floor
17	Phoenix, AZ
18	Attorney for Defendant (via email)
19	Chris DuPont
20	Attorney for Katie and Charlotte DeMocker (via email)
21	
22	John Napper Attorney for Renee Girard
23	(via email)
24	By: Phubo
25	'